

**STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
OFFICE OF FINANCIAL AND INSURANCE REGULATION**

Before the Commissioner of the Office of Financial and Insurance Regulation

In the matter of:

**Office of Financial and Insurance Regulation**

**Enforcement Case No. 12-11550  
Agency No. 12-032-L**

Petitioner,

v

**Charles Ellis Hersey  
System ID No. 0477835**

Respondent.

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Issued and enter  
this 26<sup>th</sup> day of October 2012  
by Randall S. Gregg  
Deputy Commissioner

**FINAL DECISION**

**I. BACKGROUND**

Respondent Charles Ellis Hersey is a licensed insurance producer. In November of 2011, the Office of Financial and Insurance Regulation (OFIR) received information that Respondent had failed to remit insurance premium and had pled guilty to misdemeanor embezzlement charge concerning the insurance premium. OFIR investigated the complaint and on August 1, 2012, issued a Notice of Opportunity to Show Compliance (NOSC) to Respondent at his last known address alleging that the Respondent had provided justification for revocation of licensure pursuant to Sections 1207(1), 1239(1)(d), and 1239(1)(h) of the Michigan Insurance Code (Code), MCL 500.1207(1), 500.1239(1)(d), and 500.1239(1)(h). Respondent failed to reply to the NOSC.

On September 12, 2012, OFIR issued an Administrative Complaint and Order for Hearing to Respondent at his last known address. The Order for Hearing required Respondent to take one of the following actions within 21 days: agree to a resolution of the case, file a response to the allegations with a statement that Respondent planned to attend the hearing, or request an adjournment. Respondent failed to take any of these actions.

On October 10, 2012, OFIR staff filed a Motion for Final Decision. Respondent did not file a reply to the motion. Given Respondent's failure to respond, Petitioner's motion is granted. The Administrative Complaint, being unchallenged, is accepted as true. Based upon the Administrative Complaint, the Commissioner makes the following Findings of Fact and Conclusions of Law.

## **II. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Respondent Hersey is a licensed resident producer with Property and Casualty qualifications in the state of Michigan.
2. From June 6, 2011 to October, 13, 2011, Respondent Hersey was an employee of Harrison Agency, LLC.
3. On September 21, 2011, Respondent Hersey accepted a \$243.00 cash premium payment from P. P. to be applied toward her Allstate Insurance Company (Allstate) automobile policy.
4. On September 29, 2011, Respondent Hersey accepted a \$355.00 cash premium payment from D. & L. E. to be applied toward their Allstate automobile policy.
5. On October 7, 2011, Respondent Hersey accepted a \$160.00 premium payment from D. E. to be applied toward her Allstate automobile policy. Respondent Hersey entered this premium payment into Allstate's system, but later voided it from the policy's history.
6. The total amount of the three payments was \$758.00.
7. Respondent Hersey failed to remit the three payments to Allstate.
8. On or about November 4, 2011, a complaint was filed with a local police department against Respondent Hersey alleging embezzlement.
9. On or about January 20, 2012, Respondent Hersey pled guilty to the embezzlement charge.
10. On or about February 1, 2012, Respondent Hersey was sentenced by the 47th District Court to four days of community service, 12 months of probation, and payment of \$758.00 in restitution to Harrison Agency, LLC.
11. On or about February 12, 2012, Respondent Hersey was arrested for an ordinance violation and possession of drug paraphernalia.
12. On or about March 28, 2012, Respondent Hersey pled guilty to possession of drug paraphernalia, in violation of his probation.

13. Respondent Hersey failed to notify the Commissioner of the above listed criminal proceedings.
14. As a licensee, Respondent Hersey knew or had reason to know that Section 1207(1) of the Code provides that "An agent shall be a fiduciary for all money received or held by the agent in his or her capacity as an agent. Failure by an agent in a timely manner to turn over the money which he or she holds in a fiduciary capacity to the persons to whom they are owed is prima facie evidence of violation of the agent's fiduciary responsibility."
15. Respondent Hersey failed to act as a fiduciary for \$758.00 he received or held in his capacity as an agent for Allstate and failed to timely remit \$758.00 to Allstate, to whom it was owed.
16. As a licensee, Respondent Hersey further knew or had reason to know that Section 1239(1)(d) of the Code allows the Commissioner to place on probation, suspend, revoke, or levy a civil fine under Section 1244 or any combination thereof, for "Improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business."
17. Respondent Hersey improperly withheld, misappropriated, or converted \$758.00 received in the course of doing insurance business.
18. As a licensee, Respondent Hersey further knew or had reason to know that Section 1239(1)(h) of the Code allows the Commissioner to place on probation, suspend, revoke, or levy a civil fine under Section 1244 or any combination thereof, for "Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere."
19. Respondent Hersey used dishonest practices or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state by failing to remit \$758.00 to Allstate.
20. As a licensee, Respondent Hersey further knew or had reason to know that Section 1247(2) of the Code states an insurance producer shall report to the commissioner any criminal prosecution of the insurance producer taken in any jurisdiction, within 30 days after the initial pretrial hearing date. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.
21. Respondent Hersey failed to notify OFIR of the above referenced criminal prosecutions.
22. Based upon the actions listed above, Respondent Hersey has committed acts that provide justification for the Commissioner to order the payment of a civil fine, refund of any overcharges, that restitution be made to cover losses, damages or other harm attributed to Respondent's violations of the Code, and/or licensing sanctions under Section 1244(1) of

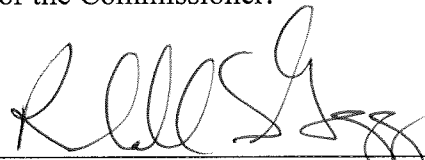
the Code for the Respondent's violation of Sections 1207(1), 1239(1)(d), and (h), and 1247(2) of the Code.

### III. ORDER

Based on the Respondent's conduct and the applicable law cited above, it is ordered that:

- 1 Respondent shall cease and desist from violating the Code.
- 2 Respondent shall immediately cease and desist from engaging in the business of insurance.
- 3 All insurance licenses of Charles Ellis Hersey are **REVOKED**.

R. Kevin Clinton, Commissioner  
For the Commissioner:

A handwritten signature in black ink, appearing to read 'R. S. Gregg', is written over a horizontal line.

Randall S. Gregg, Deputy Commissioner